

**BOARD OF ENVIRONMENTAL REVIEW
AGENDA ITEM**

EXECUTIVE SUMMARY FOR ACTION ON ADOPTION OF RULE AMENDMENTS

AGENDA ITEM # III.B.3.

AGENDA ITEM SUMMARY The Department requests the Board amend rules adopted under the Metal Mine Reclamation Act.

LIST OF AFFECTED RULES The rulemaking would amend ARM 17.24.101, 102, 103, 104, 105, 106, 115, 116, 117, 118, 119, 140, 146, 167, and 184.

AFFECTED PARTIES The proposed rule amendments potentially affect all persons who are licensed to conduct exploration activities or permitted to conduct mine and mill operations under the Metal Mine Reclamation Act.

SCOPE OF PROPOSED PROCEEDING The Board is considering final action on adoption of amendments to the above-referenced rules.

BACKGROUND In the 2000 Legislative Session, the Metal Mine Reclamation Act was amended (1) to increase application and renewal fees for exploration licenses and operating permits; (2) to allow for bond forfeiture in the event that a permittee or licensee causes an imminent danger to public health, safety or the environment and fails to abate the danger; (3) to require bonding to be set in an amount that assures compliance with the Air and Water Quality Acts in addition to the Metal Mine Reclamation Act, rules adopted under the Metal Mine Reclamation Act, and the approved operating permit; and (4) to establish an environmental rehabilitation and response account in the state special revenue fund for deposit of all fees, fines and penalties paid under the Act. Rule amendments have been proposed to reflect these statutory changes.

Proposed rule amendments reorganize information required in reclamation plans and operating permit applications. Under the present rule, a reclamation plan is required to contain information that, while necessary to evaluate a permit application, does not directly address reclamation. These requirements are transferred to the rule addressing operating permit application requirements. The proposed amendments require additional information to be included in a reclamation plan regarding the removal of facilities and structures and the implementation of postmine environmental monitoring programs. This information is required to assure reclamation to the approved post-mine land use and to assure long-term compliance with air and water quality standards. Finally, the operating permit application requirements have been expanded to include information that the Department has historically required. Providing advance notice of these requirements is designed to streamline the permit application process.

Proposed rule amendments on bonding ensure that the Department has the full bonding authority contemplated by statute. Another proposed amendment on bonding allows the Department full use of a bond even if some of the specific reclamation tasks may be performed at a lower cost than that set forth in the bond calculation. The amendment takes into consideration the fact that the bond calculation is only an estimate and that the actual cost of the line-items may be lower or higher. Finally, a proposed amendment allows the Department to forfeit a letter of credit in the event that the permittee fails to abate an imminent danger.

Other proposed rule amendments provide that, as a permit condition, a permittee is required to conduct operations consistent with written commitments made during the permit and environmental reviews and reclamation bond calculation process. Frequently, an applicant for an operating permit makes written commitments to cure deficiencies noted by the Department in its review of the permit application or subsequent amendments. An applicant may also mutually agree on mitigation measures during the environmental review process. Finally, the reclamation plan usually gains detail during the reclamation bond calculation. The Department relies on these written commitments, mitigation measures and reclamation details in approving the permit or amendment. The applicant, however, may fail to submit replacement pages to reflect these additional commitments for insertion into the permit. These amendments would make the written commitments, mitigation measures and reclamation plan details enforceable notwithstanding the failure to physically update the permit. Along the same lines, a proposed amendment expressly indicates that the phrase "plan of operations" includes operating, monitoring and contingency plans to emphasize that the monitoring and contingency plans are enforceable provisions of the permit.

Additional proposed rule amendments delete current provisions that are repetitive. Finally, rule amendments are also proposed for clarification, consistency or readability purposes. These proposed rule amendments do not make substantive changes.

HEARING INFORMATION Kelly O'Sullivan conducted a public hearing on September 20, 2002, in Helena for the purpose of receiving public comment on the proposed amendments. Substantial public comment was received in the form of oral and written comments presented prior to, during and after the public hearing.

BOARD OPTIONS The Board may:

1. adopt the proposed amendments as set forth in the attached Notice of Public Hearing on Proposed Amendment;
2. adopt the proposed amendments with revisions that the Board finds are appropriate and that are consistent with the scope of the Notice of Public Hearing on Proposed Amendment and the record in this proceeding; or
3. decide not to adopt the amendments.

DEQ RECOMMENDATION The Department recommends the Board adopt the proposed amendments with revisions as set forth in the Draft Notice of Amendment.

ENCLOSURES The following information is attached to this summary

1. Notice of Public Hearing on Proposed Amendments;
2. Hearing Officer Report; and
3. Draft Notice of Amendment.